

WILLKIE FARR & GALLAGHER

Michael H. Hammer

Washington, DC
New York
London
Paris

EX PARTE OR LATE FILED

December 22, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
The Portals, 445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL TRADE COMMISSION
OFFICE OF SECRETARY

**Re: Notification of Permitted Written Ex Parte
Presentation in CS Docket No. 98-178 (AT&T/TCI
Merger)**

Dear Ms. Salas:

Attached is a letter from members of the financial community opposing proposals to require AT&T/TCI and other cable operators to unbundle their networks so as to permit third parties to offer cable-based data services. Please file a copy of this letter in the above-captioned proceeding.

Kindly direct any inquiries about this matter to the undersigned. Thank you.

Sincerely,

Michael H. Hammer

cc: Chairman Kennard
Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
Susan Fox
Rick Chesson
Jane Mago
Helgi Walker
Anita Wallgren
Royce Dickens
Dale Hatfield
Tom Krattenmaker
John Norton
Robert Pepper

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December 18, 1998

Chairman William Kennard
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

EX PARTE OR LATE FILED

Dear Chairman Kennard:

We are members of the Financial Community who advise investors about telecommunications companies and who help these companies raise capital. We follow the Commission proceedings with great interest.

We are writing you today to provide our thoughts on the recent proposals by various businesses and entities that the Commission force cable operators to unbundle their networks so as to permit third parties to offer cable-based data services. We believe adoption of these proposals would significantly slow down the deployment of advanced telecommunications services and would retard the substantial progress the Commission has made toward the deregulatory, competitive telecommunications market envisioned by the 1996 Telecommunications Reform Act.

We urge the Commission, in evaluating these proposals, to consider the following:

1. The market for Internet access and data transmission services is a highly vibrant, competitive and innovative market.

Over the 64 years of the Commission's existence, it has had to deal with a number of issues raised by markets in which there was only one provider. Internet access is a very different market. It is fiercely competitive, with consumers having dozens of choices and several access opportunities in each market. The extraordinary explosion of innovations and new companies over the last several years provides compelling evidence that this is not a market that requires new government regulation.

Some now argue that broadband access is a different market and that the Commission should act now to assure there are many providers. This argument is contrary to marketplace reality. As financial analysts, we would never advise a client about a proposed investment in the broadband market without a thorough evaluation of trends in the narrowband market. As the record in the Commission's proceedings clearly

shows, narrowband service is a viable, and in many cases attractive, substitute for broadband.

Further, the Commission does not have to act now to assure that there will be many providers of broadband access; the market is already doing so. Over the last year, investors in capital markets have had numerous opportunities to invest in a wide range of companies pursuing two-way broadband business strategies. These businesses include: phone companies offering ADSL and ADSL-Lite; MMDS and other fixed wireless companies; utility companies; and satellite companies offering such products as Direct PC. There are at least five networks with national footprints offering the opportunity for competition as great as that offered by the wireless phone industry, where the Commission has wisely taken a deregulatory approach.

The investment in these facilities and companies are already in the tens of billions. With that kind of investment, the market is clearly signaling that it believes many competitors have a realistic chance of offering high-speed, broadband Internet access. The presence of these facilities, the plans for many more, and the continuing innovations in this marketplace should give the Commission comfort that such marketplace is, and will continue to be, highly competitive.

2. Serious consideration of an unbundling proposal will dampen the willingness of the market to finance deployment of upgraded cable facilities, other broadband facilities and related equipment.

It cannot be stated strongly enough that even a hint of regulating the cable network as a common carrier would severely diminish the willingness of investors to finance system upgrades and new facilities.

As soon as such a threat is seen by the market as a realistic possibility, the uncertainty factor would immediately stall further upgrades and delay rollouts, just as uncertainty about the ultimate levels of federally mandated LEC resale rates delayed several cable operators' push to deploy lifeline telephony services. The ultimate financial implications of such a rule would not be known until the Commission worked through all the time-consuming details, such as interconnection rates, co-location terms, and minimum set-aside for third parties, among others. Even then, investors would still need to wait until the court challenges were completed before they could be certain of the terms and conditions of their investment. Not only would this uncertainty diminish the ability of corporate entities to plan new buildouts, but it would effectively kill the public equity market for financing.

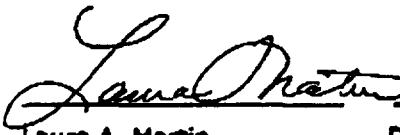
Chairman William Kennard
December 18, 1998
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This would not just effect the financing of the cable plant; it would also create, in the eyes of the financial market, a dangerous precedent in which anyone who builds a superior network would risk having that network subsequently subject to common carrier regulation. At a minimum, this would significantly raise the cost of capital for new competitors. More likely, it would be the death knell for any number of other proposed high-speed broadband communications systems.

The enthusiasm of those who would speed the deployment of broadband networks by subsidizing the cost of the customer equipment would also be dampened. As the cost of customer equipment is one of the major deterrents to rapid deployment, this kind of arrangement is critical to building early customer acceptance, and Commission action that would undercut such transactions will eliminate this kind of support.

We are excited about the economic and social benefits that new technologies can create for America. We believe that the Federal Communications Commission has appropriately articulated speeding the deployment of broadband networks as one of its most important goals, but that goal will never be reached and these benefits will never be realized if the Commission acts in a way that undermines investor confidence to provide capital for these new networks.

Sincerely yours,



Laura A. Martin
Credit Suisse First Boston
Corporation

Dennis H Leibowitz
Donaldson, Lufkin & Jenrette
Securities

Jessica Reif Cohen
Merrill Lynch, Pierce,
Fenner & Smith Incorporated

Thomas W. Eagan
PaineWebber Incorporated

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Donaldson, Lufkin & Jenrette
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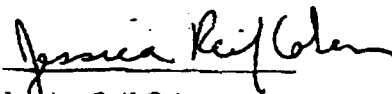
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cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani